89-1239

In The Supreme Court Of The United States

October Term, 1989

Samuel G. Chia — Petitioner.

V.

Donald P. Hodel
Secretary Of The U.S.
Department Of The Interior — Respondent.

Petition For Writ Of Certiori To The United States Court Of Appeals For The Ninth Circuit.

Samuel G. Chia In Pro Per
1901 Valleje Street #5
San Francisco Ca 94123.
(415) 921 6099

Questions presented for review.

1) Whether a district court judge should not be disqualified for having shown his hostility in an open court motion before summary motion saying, petitioner had no case in his court, the reason for the case had not been thrown out because of the term'due processs' governing it at that moment, at the time there were no documents in front of him from which merit could be drawn to support his statements?

(2) Whether the same district judge should not be disqualified for having expressed that petitioner's evidence were irrevent at the time he did not know what they were as they were not presented. Was this a bad prejudice against petitioner?

(3) Whether the same district judge should not be disqualified and return the case to petitioner for another fair hearing by another judge where excerpt of record showed that said judge had decided petitioner to have lost as soon as respondent turned in the first set of cross sumary motion document regardless of there were two more sets of answer and reply to come from the two parties and it was clearly shown that the party's witnesses severely perjured themselve was the one obtaining the judgment?

(4) Whether the same district judge should not be disqualified by the Cir. panel when he was found to have deprived of petitioner's substantive right for a de nove Title VII case for bias with messy statement that the other counsel suggested and he agreed with?

(5) Whether said judge should not be disqualified when he was found to agree to grant judgment to the party its witnesses all fully perjured themselve ?
(6) Whether there was any particular law for the 9th Cir. panel to reduce patitioner's briefs and transcripts to zero in a disqualfication appeal on a district judge for personal bias and hostility in order to habor thier colleague within the same circuit?
(7) Whether the district and the appellate courts should not make them independent from the goverment and thier colleague to act what they should in order to protect the U.S. laws and constitutions?

prefix

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

No. _____

Samuel G. Chia,

Petitioner,

V.

Donald P. Hodel
Secretary of the
U.S. Department
of the Interior, Respondent.

Petition For Writ Of Certiorari To The
U.3. Court Of Appeals For The Ninth Circuit

The petitioner Samuel G. Chiarespectfully Prays that writ of certiorari issue to review the decision of the .S. Court of Appeals for the Ninth Circuit entered on une 16, 1989.

Opinion Below

The Court of Appeals entered its memorandum ecision denying petitioner's motion to disqualify a istrict court judge. A copy of the memorandum is attached s Appendix A.

The Court denied petitioner's petition for rehearing nd suggestion for rehearing en banc on Sep. 15, 1989. A opy of the order is attached as Appendix B.

Jurisdiction

On June 16, 1989 the Court of Appeals entered its decision affirming the denial of petioner's motion to disqualify Judge Thelton Henderson and also refused to hear the summary judgment (App. A) The jurisdiction of the Court is invoked under Title 28, U.S.C. Section 1254.

Constitutional Provision Involved

United States Constition Amendment V:
Nor shall any person ... be deprived of life, liberty or property, without due process of law....

Statement of the case

This case originally consisted of 5 U.S.C. Section 2302(b), Title VII of the Civil Right Act as amended, 42 U.S.C. §2000e et seq and a decision denying petitioner's motion to disqualify the presiding Judge Thelton E. Henderson for finding for perjuries, bias hostility and etc... Petitioner was a federal employee with the U.S. Dept. of the Interior as an electronics journeyman from March 1980 to Sep. 1984 obtaining three continuous promotions exceeding the required standards of the Interior prior the change of his supervisor inJune 1983 admitting himself not qualified in the electronics field(Tab 1,p. 1 &2 of A.F. 1: agency file). He had felt comfortable with petitioner's work for many expresses(Exh. A7 & Exh. 17 of 9/29/87 motion documents). But he falsely evaluated petitioner with a level V in the annual appriasal for the year of 1983. All group leaders were satisfied

with petitioner's electronic service (Exh. 18-Exh.23 petitioner's summary motion document) but he misrepresented in the contrasy. He was Micheal R. Stricklin the chief maintenance of the Golden Gate Recreation Area of National Park Service, Dept. of the Interior at San Francisco Calif. A discrimination charge was filed with the internal EEO in the Park at the time petitioner recieved the appraisal on Feb. 1984. Both the park EEO and the Washington D.C. investigator found there was discrimination in the practice and recommanded a settlement term, but the adjudicator in washington D.C. refused and dismissed the complaint, petitioner was terminated in Sep. 1984. A personnel reprisal by Stricklin due to the disclosure of government contract irregularities under 5U.S.C. Sec. 2302(b) was heard in the Office of Merit Systems Protection Board at San Francisco on Feb. 18 and 22, 1985, the black Law Judge Phillis J. Hamilton affirmed petitioner's removal with decision totally unsupported by evidence in which she just took a little portions of the agency's witnesses' direct exams for consideration and left the clashing cross exams for the same witnesses together with petitioner's evidence uncared. As a result of the misruling, it indicated that all the agency's four witnesses perjured themselve very severely and obviously in transcripts forming a fraud on petitioner to be approved by Hamilton. A certification was filed by petitioner afterward, Hamilton forwarded the files to the M.S.P.B. Headquarter in washington and quit. The Headquarter

just refused to care for the certification but routinely concurred the fraud by the agency Interior Officials. The case submitted to the EEOC in Washington for a review, EEOC also concurred the fraud after a period of longer than a year. The San Francisco EEOC just refused to hear the Civil Right Case when the Interior forwarded the files to it after a long drag as the Interior representative misinfluenced with the M.S.P.B. decision in ex parte without the presence of petitioner and returned the files to Washington Interior Office which issued a second dismisal and was used as a right of sue in the U.S. District Court for the Northern District of Calif. because petitioner was entitled to a de nove review by the court on his claim of racial discrimination under Williams V. Dept. of the Army 715 F. 2d 1485 1491 Fed. Cir. 1983. Ordinarily, petitions for judicial review of M.S.P.B. decisions are filed in the Court of Appeals for the Federal Circuit and are reviewed on the administrative record(5 U.S.C. Sec. (c) (1)-(3) the nondiscrimination claim in a mixed case, however, where a claim of discrimination is coupled with a nondiscrimination claim, the entire action falls within the jurisdiction of the district court. A black judge Thelton E. Henderson was assigned to preside this case. After petitioner had filed his amended complaint to cover the two courses of action respondent filed its motion to dismiss the case saying that the case was untimely to appeal to the distrct

court and was frivolus etc... on May 27, 1986 at the time the Civil right case was far from expiration and the 5 U.S.C. Section 2302 (b) was still under EEOC review, it needed the Assistant U.S. Attorney General Office to stop it and said motion was withdrawn on 7/14/86,(MR 27) (p.9 Appellant's excerpt of record). Judge H-enderson set the trial date for the Title VII case to start from 3/17/87 for 3 days; Discovery cutoff on 2/2/87; pretrial date was set on 3/9/87 (Nr 30 Jul 29 86). On Feb. 9,87 (Nr 63) in an open court motion, Judge Henderson represented to petitioner that you had no case in this court. The only reason you are still here is that there is something called due process, which tells me that I can't throw this case out right now without giving you a chance to make your case! (p.4, 2/9/87 transcript* by Webb) He predecided that petitioner's tape recordings proving perjury on the Interior officials irrelevant without physically examining them (p.3, 2/9/87 transcript) and was clearly written on one of petitioner's briefs** for the 9th Cir reference. On May 6, 87, (NR 77) (p.12 petitioner's excerpt) as soon as respondent filed its cross summary motion with the illegal materials from the M.S.P.B. transcripts containing clashing testimonies, Judge Henderson decided petitioner to have lost as he ordered petitioner to pay costs of $792.5 to his ex attorney at this time, he knew that there were two more sets of answer and reply to come from the parties. On June 1, 1987, the summary hearing date, Judge denied petitioner to be entitled for a de novo summary motion for his Title VII case which had never been litigated previously He stated, that is incorrect. You are not entitled to a de novo hearing. That is wrong (p.3 6/1/87 transcript*** by Skillman) he was okay with the perjury(p.4 6/1/87 transcript).

* Exh .1 *** Exh. 3

** Exh. 2.

He further agreed that MSPB gave no federal witness to testify the 5 U.S.C.§2302 (b) case. His judgment was for intrinsic fraud to follow Hamilton in MSPB. Judge henderson signed the summary judgment for respondent together with proposed order issuing opinions unsupported by evidence(Appendix C & D). It would not be appealable by the opinions. Petitioner moved for reconsideration basis on the use of illegal materials (direct exams clashing cross exams and the evidence petitioner submitted) and it routinely denied on Jul. 21, 87(App. E) The next day,on Jul 22, 87, petitioner moved for changing judge basis on all the above to disqualify Henderson(NR 88)(p.13 on excerpt of record)On Jul.27, 87, Henderson issued order: Plaintiff's motion for changing judge is referred to the assignment committee to be assigned at random for hearing and decision(NR 91, excerpt p. 13, App. F). On Aug. 14,87, the Assignment Committee had drawn to Judge John P. Vukasin at random and was approved by the then Chief Judge Robert F. Peckham(Nr 93, App.G) and it was and is Judge Vukasin to hearing all disqualification motions in this district court, even Henderson disagreed to be disqualified. However, Henderson failed to follow the local Rule, he immediately broke his order by assigning hearing judge at his own choice by taking Judge Robert Peckham (NR 94, App. H), as the then Chief Judge peckham would do illegal favor on his

subordinate judge easily: To wit, according to the government disclosure, there is FBI record showing Judge Peckham telling of Dist. Judge Robert Aguil about FBI's wiretap on a criminal suspect on Aug. 1987, the suspect had a link with the Dist Judge Aguilar who is being indicted for multipal crimina charges including the disclosur of goverment secr investigation on the suspect and the trial will st on Feb. 1990. There was another reassignment order some unknown on Oct 9,87, saying, Henderson was re as a presiding judge in the case, Judge Peckham to the disqualification motion(App. I). Petitioner filed his motion pursuart to Fed.Civ. Pro. Rule 60 (2)(3)(4) basis on new discovery evidence on 9/29/ as to show that the cross motion was indeed illegal material in nature for court reference(NR 95). The disqualification hearing was set on Nov. 13, 87(NR 99, excerpt p. 14). Respondent filed its opposition to the disqualication motion on Oct 29, 87,(NR 101 97 days after the motion had been filed, with sencl sory citations without giving any factual material that Judge Henderson did similarly as cited. However, it did indecate that the 9th Cir. had never disqualified any district judge previously in history, it could be so believed! Chia respon-ded to it with a 4 page brief(NR 102, excerpt p.3,4 5 and 6 arguing that it was far too late for

the respndent to answer for that long a time. further, Judge henderson had violated the local rule for what he had done. He was engaged in hostility prejudice,a bent of mind, finding for parjuries in the opposition of law, depriving of Chia's solid substantive right in a de novo Title VII case. There was a declration covering most of the two reporters' transcripts. Petitioner lost in the motion, order was entered on 11/17/87(App. J) saying that Chia's original(first) affidavit was too short, miscontrued finding for perjuries as an adverse ruling, it also stated that Henderson's ruling was erroneous and told Chia to pursue it in his appeal not through a disqualification motion. Judge peckham entirely omitted the hostitlity, prejudice, a bent of mind Henderson was engaged in the adjudication of the case for biasing or discriminating against Chia. Henerson further failed to fufil the Fed. Civ. Pro. Rule 60 (b)(2)(3)(4) in not caring to adjudicate the motion filed on 9/29/87 after Chia had awaited for nearly a month. Notice of appeal was filed on Dec. 16, 87. The disqualification motion lasted for longer than four months due to Henderson illegal motivations there were unnessary problems given by the Cir. Ct requiring Chia to answer within 2 weeks or case was dismissed in questioning whether the disqualification appeal carrying reviewable documents with final decision and etc.. at last, the panel Canby, Beezer and

Kozinski deprived of Chia's appeal right of his summary judgment saying the date of summary judgment did not suspend 60 days wi . the date of notice of appeal regardless of Henerson's delay in the lengthy illegal motivations in the dist. ct as shown and contrued the timely disqualification appeal under Fiester V. Turner, 783 F. 2d 1474, 1476 (9th Cir. 1986) Fed. Civ. P. Rule 60 (b) (6) for only abuse of discretion review not any error consideration at all. The panel Tang, Canby and O'Scannlain alterred the case name from Chia V. Donald Hodel, Secretary of the U.S. Dept of Interior to Chia V. Michael R. Stricklin, William Mote, John Davies and Dept. of the Interior, saying Chia was complaining 3 individual employees of the Interior and the Dept. of the Interior. It was an is possibly the 9th Cir. policy to handle disqualificatio appeal(s) for only abuse of discretion not errors even on the timely appeals vasting full reviews on both, then, re trict to briefs and records, gradually, the available records and briefs in front of them were reduced to noun so that there was nothing to be found as to deny the appeal for thier colleague's favor making it not for publication not to be cited as to seal the scandles for ever. A Tang was named to lead the other judges as to say that there was no discrimination on the So called memorandum decision. And there is only one U.S. Supreme Court that this case would never be granted petition by discretion itself those were the exact ideas of the panel. Petitioner's disqualification appeal was denied as shown on App.A and it was useless to file petition for rehearing and sugge-

tion for rehearing en banc was useless to reinform of them that the required materials they wanted were located on the repoorters' transcript, 1st brief p.12 and 15 filed on Aug. 88, and appellant's excerpt p. 3,4,5 , 6, 9 & 12, etc.... as it was thier intentions to fail to make them independent from thier colleagues in the circuit and the government and protection of the U.S. law and constitution was unrequired. Petitioner was refused in the rehsaring en bamc (app. B). The then Chief Dist Judge peckham too did his illegal favor for Henderson as he had done on the Dist.Judge Robert Aguilar by unavoidable inference.

Reasons for granting the writ.

Petitioner has been denied fair hearing all the time with great grievance. The M.S.P.B., E.E.O.C., dist court and the 9th Cir. all were acting(1) arbitary, capricious and abuse of thier discretions, nothing was done in accordance with law (2) They obtained without without procedures required by law, rule or or regulation having been followed and (3) unsupported by anything lawful. They failed to make themselve indepdent from the government and colleagues in the lower court. (4) They allowed the government employees to stand above the law.

Judge henderson's hostility toward petitioner, his blind judging without examining the evidence making them irrevant evidence(2/9/87 transcript by Webb),

his predecision on petitioner's loss in the case after defendant filed its first set of cross motion papers(NR 77, excerpt p.12, May 6, 87),ordering Chia to pay cost, his deprivation of Chia de novo Title VII case meaning giving no hearing on Chia's Title VII case, granting judgment for perjuries were much very far from acceptable and were absolute discrimina tion and fraud on petitioner, as he approved the frau (6/1/87 transcript by Skillman). Judge Robert peckha abused his discretion in accepting respondent's untim ly answer to disqualification motion and accepting un usual reassignment from Henderson to hear the motion, sin Judge John P. Vukasin was and is the special Judge to hear this kind of motion in this Dist Court. He furth abused his discretion in miscontruing Henderson's fi ing for perjuries for fraud as an adverse ruling. He erred in failing to consider even one of the sereral items in hostitility, a bent of mind, prejudice for biasing against petitioner. It was unreasonable for t Cir. panel to miscontrue a timely disqualification appeal under Fiester V, Turner 783 F. 2d 1474, 1476(9 Cir. 1986). There is no law to restrict timely dis- qualification appeal for only abuse of discretion review and it must be on errors as well. It was not reasonable that the panel reduced petitioner's briefs and transcript to zero and there was nothing to be found. Henderson had done everything in the oppositi of law in order to bias against Chia that the party

carrying intrinsic fraud was granted judgment not the party(pititioner)carrying out the burden of proing his compluints by a preponderance of evidence yet the panel still represented that there was no question about henderson's impartiality. Henderson had completely deviated to the contrasy of the law for discriminating against Chia yet the panel could find nothing and Judge Peckham too abused so much in his discretion, the Cir. panel had falsely pretended for injustification against appellant-petitioner that there is no room for constitution for Oriental American! This Supreme Court is respectfully requested to act in granting its writ and only this Supreme Ct. may correct the lower courts' deviation for justice and it is nationally important.

Respectfully submitted

Date: Jan. 18, 1990.

Samuel G. Chia

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Not For publication

United States Court of Appeals

For the ninth Circuit

Samuel G. Chia,
Plaintiff-Appellant,
V.
Michael R. Stricklin; William F. Mote; John Davies; Dept. of the Interior,
Defendant-Appellees. /

Filed
6/16/1989
Cathy A. Catterson, Clerk U.S. Court of Appeals

No. 87-15103
Dc No. Cv-85-6342 TEH
Memorandum*

Appeal from the U.S. District Court for the northern District of California
Thelton E Henderson, District Judge, Presiding

Submitted Jun 6, 1989
San Francisco, California

Before: Tang, Canby, and O'Scannlain, Circiut Judges.

We are asked to consider whether the district court abused its discretion by denying plaintiff's motion to dusqualify another district court judge.

Facts and findings

Samuel Chia (Chia or appellant), filed a complaint against the Secretary of the U.S. Department of the Interior, and three Individuals of that departmentalleging, among other claim, violation of Title VII of the Civil Right Act of 1964. He then moved for summary judgment which was opposed by defendant who file a cross-motion for summary judgment. Judge Thelton E. Henderson of the Northern District of California granted appellees' cross-motion for summary judgment and denied appellant's motion.

Chia filed a motion for reconsideration which was contrued as a motion under Fed. R. Civ. P. 60 (b) a denied. Chia next filed a motion requesting Judge H derson to disqualify himself. Judge Henderson decl ed to disqualify himself and referred the motion to another judge of the court for hearing and decision Chief Judge Robert H. Peckham therefore denied the motion for disqualification construing the motion as one made under Fed. R. Civ. P. 60 (b).

Chia then sought to appeal the judgments of th district Court, including the order on the disquali ficationissue. A motion panelof this court held that we lacked jurisdiction to consider Chia's appeal except with regard to the order denying his motion to disqualify Judge Henderson (order of 4/1, 1988).

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for submission on the record and briefs and withou oral argument. Fed. R. App. P. 34(a), Ninth Cir Rul 34-4.

I

The only issue Chia's appeal may raise is whether or not Judge Henderson was biased in his grant of the appellees' motion for summary judgmen Chief Judge Peckham's order denying the motion of disqualification is reviewable for an abuse dis-

cretion. Mayes V. Leipziger, 729 F. 2d 605, 607(9th Cir. 1984); Cel A-PakV. California Agricultural labor Relations Board,680 F. 2d 664, 668(9th Cir.) Cert. Den, 459 U.S. 1071 (1982) A judge may be disqualified if there are objective reasons for a reasonable person with knowledge of all the facts to conclude that the Judge's impartiality might reasonably be questioned. Leipziger, 729 F. 2d at 607. An appellant must show that the judge's alleged bias or prejudice is personal as opposed to being judicial in nature. ID.

Appellant here has made no such showing. In addition, there is nothing in the record to indicate that any bias existed. Therefore, we find that Chief Judge Peckham did not abuse his discretion in denying Chia's motion for disqualification.

Affirmed.

App. A.

U.S. Court of Appeals
for the Ninth Circuit.

Samuel G. Chia
Plaintiff-Appellant,
V.
Michael R. Stricklin
et al
Defendant-Appellees /

Filed
Sep. 15, 1989.
Cathy A. Catterson
Clark
U.S. Court of Appeals

No. 87-15103
D.C. No. Cv-856342 THE
ORDER

Before: Tang, Canby, and O'sannlain, Cir. Judges

The Panel has voted to deny the petition for rehearing and reject the suggestion for rehearing en

banc.

The full court has been advised of the en banc suggestion and no judge of the court has requested a a vote on it.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

Appendix B.

Judgment on decision of the court

U.S. DISTRICT COURT

for the

Northern District of California

Filed
Jun 2 1987.
William L. Whittaker
Clerk U.S. District
Court Northern Dist.
of California

Samuel G. Chia
V. Plaintiff
Donald H odel, et al.,
Defendant

Civil Action file No.
C-85 6342 TEH

Judgment

This action came before the Court, Honorable Thelton E. Henderson United States Dist. Judge, presiding and a decision having been duly rendered,

It is ordered and Adjudged

That defendant's motion for summary judgment is granted. Entered in Civil Docket 6/2/1987.

Dated at San Francisco, California this 2nd day of June 1987.

William Whittaker
Clerk of Court

By Signed Henderson.

U.S. Dist. Court
Northern Dist. of Calif.

Samuel G. Chia
Plaintiff
V.
Donald P. Hodel
Secretary of the
U.S. Dept of the
Interior,
Defendant.

Recieved
4/12/87
William Whittaker
Clerk U.S. Dist
Court Northern
Dist. of Calif
Filed
Jun 1 1107 AM 87
Clerk
U.S. Dist Court
Northern Dist. of
Calif.

Civil No. C85
6342 TEH

Order granting defendant's motion for Summary Judgment.

The parties cross-motions for summary judgment came on regularly for hearing before the Honorable Thelton E. Henderson. Plaintiff was present as was counsel for the defendant. After having read and considered the papers filed by both sides and the arguments of plaintiff during the hearing and for good cause shown,

The Court finds that plaintiff has failed to establish a Prima facie case of discrimination. He has failed to set forth facts which link his termination of employment to his race, color or nationalorigin.

Even if plaintiff has made out a prima faciie case the defendant has articulated legitimate, non-discriminatory reasons for terminating plaintiff's em-

ployment. His poor performance and poor attitude towards his job are documented by substantial evidence contained in the administrative proceedings which have been made part of the record in this case.

In addition, plaintiff has failed to raise a triable issue of material fact in response to defendant's motion for summary judgment. Plaintiff's arguments are speculative and conclusionary and are unsupported by any of the factual evidence which is part of the record in this case. The Court finds further that the MSPB decision is not arbitary, capricious or contray to law and that it is supported by substantial evidence. 5 U.S.C.S 7703(c).

Therefore, for these reasons as well as those stated in open court, it is hereby ordered that defendant's cross-motion for summary judgment shall be granted and plaintiff's motion for summary judgment shall be deied.

Dated: 6/1/87

/sgn/
Thelton E. Henderson
U.S. Dist. Judge

Order

Filed
Jul 2 1987
William L. whittaker
Clerk U.S. Dist. Court
Northern Dist. of California

In the U.S. Dist. Court for the northern California.

App. E

Samuel G. Chia,
plaintiff
V.
Donald P. Hodel,
Defendant. /

No. C85 6342 TEH

ORDER

The Court is in receipt of plaintiff's 'Notice' of motion for reversing the previous judgment' and accompanying motion papers, filed july 16, 1987. The Court construes these papers as a motion for reconsideration for this Court's June 1, 1987 order granting summary judgment in favor of defendant After carefully considering plaintiff's papers submitted in this matter, the Court finds that plaintiff's arguments are without merit. Accordingly, good cause appearing, It is hereby ordered that plaintiff's motion for reconsideration is denied.

It is so ordered.

Dated: jul 21, 1987

/signed/
Thelton E. Henderson
U.S. Dist. Judge

App. E

Filed
Jul 27 1987
William L. Whittaker
Clerk U.S. Dist. Court
for northern Dist. of
California

In the U.S. Dist. Court for the Northern Dist. of California

Samuel G. Chia
V. Plaintiff,
Donald P. Hodel,
Defendant. /

No. C 85 6342 TEH

Order

App.F

On July 22, 1987 plaintiff Samuel G. Chia filed a "motion for Change Judge", which appears in fact to be a request that the undersigned disqualify fimself from the within action. The undersigned declined to voluntarily disqualify himself from this case, or to otherwise withdraw from this case, and shall consider plaintiff's motion to one to disqualify the undersigned.

Accordingly, It is ordered that:

1. Plaintiff's Motion for changing Judge referred to the Assignment Committee of this Court, to assigned at random to another Judge of the Court for hearing and decision.

SO ORDERED.

Dated: July 27, 1987

~~Thelton E. Henderson~~ /S/

U.S. Dist. Judge

APpendix F

U.S. Dist Court
for the Northern Dist. of California

Case No: C 85 6342 TEH

Samuel G. Chia V. Donald P. Hodel

Reassignment Order

Good cause appearing therefor,

It is ordered that this case is reassigned to Honorable John P. Vukasin, Jr.

Filed Aug 14 1987
William L. Whittaker

App G

Clerk, U.S. Dist. Court Northern Dist. of California for all further proceedings.

Council are instructed that all future filings shall bear the initials JPV immediately after the case number.

All matters presently scheduled for hearing are vacated and should be renoticed for hearing before the Judge to whom the case has been reassigned.

For The Assignment Committee:

Date: Aug 12, 1987. /S/
Robert F. Peckham Chief ~~Judge~~.

New Case file Clerk:

Copies to: Courtroom Deputies
Special Projects
Log Book Noted
Entered in Computer 8/7/87

Case Systems Administrator:

Copies to: All Counsel
Transferor CSA

App. G.

NDC Assgt-1 Rev. 1-83

U.S.Dist. Court Northern Dist. of Calif.

Samuel G. Chia
Plaintiff,
V.
Honald P. Hodel
Defendant. /

Filed 1987 Aug 21 AM
9;56 W.L. Whittaker
Clerk
U.S. Dist Court
No. Dist. of Ca.
No. 85-6342-TEH

Reassignment Order

App. H.

It appearing to the Assignment Committee that the assignment of this case was erroneously accomplished by draw to Judge John P. Vukasin and should have been

Assigned to Judge Robert F. Peckham

It is so ordered,

1. That the Clerk reassign the case to Judge RFP ; and

2. That the Clerk place a sealed ballot bearing JrV intitials in the Category 3 Box.

Dated: 8/19/87

For the Assignment Committee:

/s/

Thelton E. Henderson
Acting Chief Judge

App. H

U.S. Dist. Court for the Northern Dist. of Calif.

Samuel G. Chia
Plaintiff
V.
Donald P. Hodel
Defendant /

Filed
Oct 9 12 25 PM 87
William L. Whittaker
Clerk U.S. Dist. Ct.
No. 85-6342 TEH

Reassignment Order

The assignment of this entire case was erroneously accomplished by draw to Judge Peckham on Aug 21, 1987. The case shall be retained by Judge Henderson, and the assignment to Judge Peckham was only for the limited purpose of considering the motion to disqualify Judge Henderson.

App. I

It is ordered,

1. That the Clerk reassign the case to Judge Henderson, except for the motion to disqualify Judge Henderson.

2. That the Clerk assign the motion to disqualify Judge Henderson to Judge Peckham.

Dated: 10/9/87 For the Assignment Committee:

/s/

(Signature not readable)

App.I

In the U.S. Dist. Ct. for the Northern Dist. of Ca

No. C-85-6342 TEH

Samuel G. Chia,
Plaintiff
V.
Donald P. Hodel, Secretay of the Interior.
Defendant. /

Order denying Plaintiff's motion to disqualify Judge Henderson.

Filed Nov 16 Am 11: 23 W.L. W Clerk's stamp.

App. J

Introduction

Plaintiff Samuel Chia has alleged that he was improerly removed from his position as an electronic mechanic with the Dept of the Interior. By order of Jun 2, 1987, the Honorable Judge Henderson entered summary judgment in favor of the defendant. Judge Henderson ruled that the plaintiff had failed to establish a prima facie case of discrimination, and that plaintiff's poor job performance justified his termination. A motion to reconsider this ruling was denied on 7/21/87. On the next day, the plaintiff, acting pro se, filed a motion to disqualify judge Henderson. A second motion for reconsideration was filed on Sep. 29, and is the only substantive matter currently pending in the case.

Descussion

In a two paragraph affidavit in support of his mo-

tion for disqualification, plaintiff states his belief that Judge Henderson is personally biased against plaintiff. The affidavit does not contain any factual support for this conclusory statement. The plaintiff's original affidavit therefore does not meet the exacting standard of 28 U.S.C.§ 144 (1982), which requires that an affidavit in support of a motion to disqualify shall state the facts and the reasons for the belief that bias or prejudice exists. ID.; see Wood V. McEwen, 644 F. 2d 797, 802 (9th Cir. 1981), cert. den 455 U.S. 942 (1982).

Plaintiff's reply to defendant's opposition to the disqualification motion states for the first time tha factual basis for his motion. Plaintiff essentially argues that Judge Henderson's decision to grant summary judgment in favor of the defendant is incorrect and demonstrates bias. Adverse ruling of course, are not by themselve a sufficient ground for disqualifying a judge. See Commercial Paper Holders V. Hine (In re Beverly Hills Bancorp), 752 F 2d 1334, 1341 (9th Cir. 1984) The plaintiff should pursue his argument that Judge Henderson's decision was erroneous on appeal, not through a disqualification motion.

The factual allegations contained in the plaintoff's declaration and in his response are not adequate, and therefore his motion must be denied.

It is so Ordered.

Dated: Nov. 16, 1987.

/S/ Robert F. Peckham
Chief U.S. Dist. Judge.

Relevant parts from the court reporter Tonia L. Webb On 2/9/87.

Page 3.

The Court: Do you understand that, Mr. Chia?

Mr. Chia: I understand. But I like to ask the Court that tape recording evidence(not presented).

The Court: This isn't the time to talk about tape recordings, Mr. Chia.

Mr. Chia: Because they(his atty's firm) not agreeable to use such evidence.

The Court: I am probably not agreeable to using such evidence. It is irrevant, from what I've seen of the record. So I agree with them. That give you the guidance(there should not be any record other than pleading papers in his chamber).

Page 4.

Henderson: I think you have no case. The only reason you are still here is that there is something called due process, which tells me that I can't throw this case out right now without giving you a chance to make your case.

(this motion was for petitioner's atty to withdraw only for reason that she wanted her client to drop

the tape recording evidence against the Interior's Officials' misrepresentations).

Relevant parts from Excerpt page 9:

1986 Jul 29, NR 30, Order For Pretrial Preparation: Court Trial set 3/17/87 at 9:30 A.M. for 3 days; Discovery Cutoff 2/2/87; Discovery Referred to Magistrate Woelflen; Pretrial Conference set 3/9/87; Experts to be designated 60 days prior to trial.....

Relevant part from Excerpt page 12:

1987 May 6, NR 77, ORDER: Plaintiff to pay $792.5 to Suzanne Price, an attorney for expenses TEH.

Relevant parts from the court reporter Diane E. Skillman's transcript p.3 on 6/1/1987.

Mr. Chia: The proof of defendant's justification for the annual appriasal were fully pretextural that plaintiff should not be evaluated level V. Removal proposal should not have been made and plaintiff has therefore proved that defendants' proferred reason for the termination was also pretext.

Plaintiff is entitled to have a de novo summary judgment motion.

The Court: That is incorrect. You are not entitled to have a de novo summary judgment motion. That's wrong.

go on.

Chia: This case never been litigated previously in M.S.P.B.

The Court: Let me interrupt you.

Counsel has suggested, counsel for the government and I am in agreement with them, that my job here is not, as I havejust said, to have a de novo hearing, but only to see if you have a fair hearing below at the MSPB, and to look at the record,which I have done and spent a lot of time doing, to see if substantial evidence exits in that record for them to do what they did.

Are you in agreement that that's what's before me?

Chia: No, I don't.

The Court: What is before me? what must I decide?

Chia: MSPB has not followed the procedure and regulations required by law to give me the witnesses to testify in the hearings, to let me ... Did not let me testify against supervisors. Therefore,look at the cross examinations for the same reasons. MSPB had the action arbitaryn caprious, not in accordance with law.

The Court: Okay.

Chia: There was perjury in the hearings that the termination should not have been reached.

The Court: Okay.

Mr. Chia,we have had many a hearing here, and this case goes back to 1985. and part of.....